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Comprehensive review of the whole question of peacekeeping operations in all their aspects

Prosecution of crimes against deployed peacekeepers

Report of the Secretary-General

Summary

The present report reviews the processes involved in the investigation and prosecution of crimes committed against deployed United Nations peacekeepers, as requested in the 2010 report of the Special Committee on Peacekeeping Operations.

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1. The present report is submitted in response to the request made in paragraph 38 of the report of the 2010 substantive session of the Special Committee on Peacekeeping Operations (A/64/19). In particular, the Special Committee requested me "to prepare and submit to the General Assembly before the 2011 substantive session of the Special Committee for its consideration a comprehensive report on all the processes involved in the investigation and prosecution of crimes committed against deployed United Nations peacekeepers, including advice on the feasibility of applying the United Nations investigative mechanism, provided for in a revised model memorandum of understanding endorsed by the General Assembly in resolution 61/267 B, with respect to such crimes".

2. At the outset, I wish to point out that the United Nations itself is not in a position to bring charges against the alleged or suspected perpetrators of crimes committed against its peacekeepers, nor is it in a position to prosecute them. The Organization relies on Member States to fulfil their obligations under the relevant international legal instruments mentioned below to exercise their jurisdiction to investigate such crimes and prosecute the perpetrators thereof in accordance with their national laws.

3. For instance, by concluding a status-of-forces agreement (A/45/594) with the United Nations, host Governments undertake an obligation to "ensure the prosecution of persons subject to its criminal jurisdiction who are accused of acts in relation to the United Nations peacekeeping operation or its members which, if committed in relation to the forces of the Government, would have rendered such acts liable to prosecution".

4. Pursuant to the Convention on the Safety of United Nations and Associated Personnel of 1994, States parties are, inter alia, required to make certain crimes against United Nations and associated personnel punishable by appropriate penalties, to establish their jurisdiction over such crimes and to prosecute or extradite the alleged offenders. In accordance with Security Council resolution 1502 (2003) and the resolutions adopted by the General Assembly annually since 2002 on the safety and security of humanitarian personnel and protection of United Nations personnel, I have, in recent years, routinely sought, and almost without exception obtained, the inclusion of the key provisions of the Convention (as enumerated in those resolutions), as well as the above-mentioned clause from the model status-of-force agreement in status-of-forces agreements and status-of-mission agreements.

5. In accordance with the Rome Statute of the International Criminal Court,[1] the definition of "war crimes" includes "intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict". While States parties to the Rome Statute have primary jurisdiction to investigate and prosecute such war crimes, the International Criminal Court may investigate or prosecute such crimes where the State concerned is unwilling or genuinely unable to do so, provided that the conditions for the exercise of its jurisdiction are met.

6. Finally, I would recall that the General Assembly, in its resolution 61/267 B, welcomed the report of the Special Committee on Peacekeeping Operations on its

[1] United Nations, *Treaty Series*, vol. 2187, No. 38544, article 8, para. 2 (b) (iii).

2007 resumed session (A/61/19 (Part III)) and endorsed the recommendation contained in paragraph 3 thereof by virtue of which it requested me to incorporate certain amendments to the model memorandum of understanding contained in chapter 9 of the "Manual on Policies and Procedures Concerning the Reimbursement and Control of Contingent-Owned Equipment of Troop/Police Contributors Participating in Peacekeeping Missions (COE Manual)". Clearly, there is a distinction between a United Nations internal investigation of misconduct by peacekeeping personnel and the national criminal investigation and prosecution of crimes or other offences committed against deployed United Nations peacekeepers. With respect to the provisions of the model memorandum of understanding, I therefore wish to point out, by way of example, that the amendment on investigation contained in article 7 quater deals with acts of misconduct or serious misconduct committed by a member of a national contingent serving as a peacekeeper. Similarly, the amendment on the exercise of jurisdiction set out in Article 7 quinquiens refers to crimes or offences that might be committed by military members and any civilian members subject to the national military law of a national contingent.

7. In conclusion, I would like to reaffirm that the United Nations, in the interest of justice and to ensure that those who seek to bring harm to its peacekeepers are held accountable for their crimes, will cooperate with and provide every possible assistance to the competent national authorities investigating or prosecuting any crimes committed against deployed United Nations peacekeepers. In a manner consistent with its rights and obligations under the Convention on the Privileges and Immunities of the United Nations, the United Nations will provide information it deems relevant about the crime arising from any internal investigation or board of inquiry it may have conducted and may also facilitate witness or victim testimony to assist the Member State concerned in fulfilling its obligation to carry out the necessary investigation or prosecution.